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C O N F I D E N T I A L HONG KONG 001769

FOR ACTING A/S REVERE FROM CG KEITH

E.O. 12958: DECL: 04/06/2029
TAGS: PGOV PHUM PREL CH HK
SUBJECT: ACTING CE TSANG SEEKS U.S. UNDERSTANDING

Classified By: Consul General James Keith, Reasons: 1.4 (b,d)

¶11. (C) Acting Chief Executive (A/CE) Tsang called me late April 6 to provide background regarding the Hong Kong Government's (HKG) decision to initiate a request for an interpretation to settle the issue of the duration of the term of the CE to be elected in July of this year. He said that a briefing for the Consular Corps was being scheduled, but he wanted to ensure U.S. understanding of the rationale for this course of action. He emphasized he had consulted widely and publicly before embarking on what he termed a "last resort." There were no other options that would produce an outcome consistent with his commitment to the rule of law and, he emphasized, in time for the upcoming July election. Tsang advised that he believed it would be disastrous for Hong Kong if the election were not held on schedule, and he dismissed as unworkable the suggestion made by some legislators that the election be held even if there were no resolution of the debate over term of office.

¶12. (C) Tsang averred this was an appropriate issue for the central authorities under the Basic Law because it addressed the relationship between the two systems under "one country, two systems" and it dealt with the appointment of the Chief Executive, both matters that were explicitly identified in the law as the proper ground for central deliberation.

¶13. (C) Recognizing that the question of the process was the focus of international attention, not popular opinion, Tsang nevertheless noted that the Hong Kong people increasingly favored an interpretation from the National People's Standing Committee (NPC SC) to solidly ground the decision on the term of office for the next CE. Tsang asserted that he was comfortable his Government's request for an interpretation would not erode the rule of law or the Hong Kong courts' authority.

¶14. (C) Comment. Tsang's outreach to the public on this issue and the care he has taken to be seen talking to the Hong Kong people, including opposition politicians, is notable. He has performed well in the public arena and is being rewarded with popular support, despite opposition from pro-democracy politicians who fear the request for an interpretation will be seen as short-circuiting the courts and intervening in due process in Hong Kong. Some will criticize this interpretation as indistinguishable from the previous two (on right of abode and precluding universal suffrage in 2007 and 2008). There is to my mind a qualitative difference between the technical fix required of the Basic Law in this case and the broader political agenda evident in the April 2004 NPC SC's ruling out of universal suffrage. Tsang is trying to establish a legal basis for the outcome already dictated by the central authorities. Ideally, Beijing would have transparently sought an amendment to the Basic Law to take care of this technical deficiency. I believe an interpretation, while inferior to an amendment, is better than no action at all. At least an NPC SC

interpretation will conform to the expectation that there be a legal basis for Beijing's decision. Under the present circumstances, Tsang is doing more with the central authorities than his predecessor had done or would do in similar circumstances. This is not supine obedience, but is rather a good faith effort to make the best of a bad situation. End Comment.

KEITH